

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 28, 2010

In the Matter of E. BADGETT, Minor.

No. 298641
Wayne Circuit Court
Family Division
LC No. 10-493058

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Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (i), (l), and (m). We affirm.

Respondent mother first argues that the Department of Human Services (DHS) did not make reasonable efforts toward reunification. We disagree. Under the facts and circumstances of this case, reasonable efforts were not required. See MCL 712A.19a(2)(c); MCR 3.965(D)(2)(c); MCR 3.977(E). We further conclude that there was clear and convincing evidence to support the statutory grounds for termination. See *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Respondent mother's parental rights were involuntarily terminated to two of the minor child's siblings, and she voluntarily released her rights to another sibling after the initiation of proceedings under section 2(b) of the Juvenile Code. Respondent mother had made little effort to rectify the problems that existed from the previous terminations, including substance abuse, lack of appropriate housing, and lack of income. This minor child was born positive for cocaine.

Next, both respondents argue that the trial court lacked jurisdiction to conduct a permanent custody trial because respondents did not have proper notice of the proceeding. We disagree. We review de novo the issue of law whether a court has personal jurisdiction over a party. *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000).

MCL 712A.12 provides, in pertinent part:

After a petition shall have been filed and after such further investigation as the court may direct . . . the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated If the person so summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing thereon, by personal service before the hearing, except as hereinafter provided.

In *In re Brown*, 149 Mich App 529, 535; 386 NW2d 577 (1986), this Court, citing *In re Paulson*, 212 Mich 502; 180 NW 386 (1920), held that “the statutory notice and summons requirements were jurisdictional.” The purpose of the summons, as the *Brown* Court explained, is to give notice of the hearing, as well as apprise the interested party of the charges and afford them reasonable time in which to prepare a defense. *Id.* at 541-542. Accordingly, the failure to comply with the notice requirements of MCL 712A.12 is a jurisdictional defect that renders all proceedings void. *Brown*, 149 Mich App at 542.

In this case, a combined preliminary hearing and permanency planning hearing on the petition seeking permanent custody of the minor was held on March 11, 2010. Both respondents were present at the hearing and waived a formal reading of the petition and probable cause. Both respondents also acknowledged service of the petition. The summons was dated March 11, 2010. Thus, the notice requirements of MCL 712A.12 were met. Thereafter, the court authorized the petition and then set the pretrial hearing for March 30, 2010, at 8:30 a.m., before Referee Jennifer Pilette. The court advised both respondents that they had the right to have this matter heard before a judge or referee, with or without a jury. Consistent with MCR 3.915(B)(1), respondents were also advised of their right to have an attorney represent them at any and all hearings and that, if they could not afford an attorney, an attorney would be provided at no cost.

The pretrial hearing was conducted as scheduled, on March 30, 2010, and neither respondent appeared in person, but both were represented by their attorneys. Rick Nelson represented respondent father and Edward Joseph substituted in for the attorney of record, Michael Cherry, on behalf of respondent mother. At that time the court noted that the parents were personally served with the petition and that the petition had not been amended. Accordingly, the trial was set for May 11, 2010, at 1:30 p.m.

Trial commenced as scheduled on May 11, 2010. Neither respondent appeared in person, but both were represented by their attorneys of record. Rick Nelson represented respondent father and Michael Cherry represented respondent mother. The fact that neither respondent was present at the trial was not raised by either of respondents’ counsels, the court, or the other attorneys. After the hearing was concluded, the court rendered its decision to terminate both respondents’ parental rights.

Respondents claim that they did not receive the requisite notice of the trial as set forth in various court rules and that such defect is jurisdictional rendering all proceedings void. We

disagree. First, the failure to follow the court rules regarding notice requirements would not establish a jurisdictional defect. See *In re Adair*, 191 Mich App 710, 714; 478 NW2d 667 (1991), citing *Brown*, 149 Mich App at 540-542. Because the statutory notice and summons requirements were met in this case, there was no jurisdictional defect. That is, this is not a case where the court failed to give the requisite notice to acquire jurisdiction. *In re Andeson*, 155 Mich App 615, 619; 400 NW2d 330 (1986). Jurisdiction was established before the matter was adjourned; accordingly, respondents have failed to establish a jurisdictional defect.

Second, notice of the proceedings was sufficient. As discussed above, both respondents were represented by attorneys. See MCR 3.915(B)(1). Both respondents acknowledged service of the petition and the petition was never amended. Although both respondents failed to appear at the pretrial when the date of the trial was scheduled, both respondents were represented by attorneys at the pretrial. Under MCR 3.920(F), when a party is represented by an attorney and after a party's first appearance before the court, subsequent notice of proceedings and pleadings may be served on an attorney for the party. See, also, *In re Atkins*, 237 Mich App 249, 251; 602 NW2d 594 (1999). At the subsequent trial, both respondents were represented by attorneys and, before the trial commenced, neither attorney objected to the trial proceeding in the absence of respondents. Thus, even if there was error with regard to the provision of notice, respondents have failed to establish plain error warranting reversal with regard to this unpreserved claim. See *People v Carines*, 460 Mich 750, 762-764; 597 NW2d 130 (1999).

Finally, respondent father argues that there was not clear and convincing evidence to support the statutory grounds for termination of his parental rights. We disagree. Respondent father's parental rights were terminated under MCL 712A.19b(3)(i) and (l). There was clear and convincing evidence, supported by exhibits admitted at the termination hearing, that respondent father's parental rights had been terminated to siblings of this minor child for reasons of neglect and abuse, and that prior attempts to rehabilitate respondent father had been unsuccessful. Thus, the trial court did not clearly err in finding clear and convincing evidence to support the statutory grounds for termination. See *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald